

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals Nos. L-14-1075

Appellee

Trial Court Nos. CR0201303077

v.

Marquis Perry

DECISION AND JUDGMENT

Appellant

Decided: March 31, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Lindsay D. Navarre, Assistant Prosecuting Attorney, for appellee.

Kent Sobran, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Marquis Perry, appeals the March 11, 2014 judgment of the Lucas County Court of Common Pleas which, after appellant's guilty plea to one

count of felonious assault, sentenced him to eight years of imprisonment to be served consecutive to prior convictions being served at the time of the offense. For the reasons that follow, we affirm.

{¶ 2} On December 2, 2013, a two count indictment was filed charging appellant with one count of felonious assault, R.C. 2903.11(A)(1) and (D), a second degree felony, and assault, R.C. 2903.13(A), (C)(1) and (C)(3), a third degree felony. The charges stem from an assault on a corrections officer while appellant was incarcerated at the Toledo Correctional Institution.

{¶ 3} On February 26, 2014, appellant entered a guilty plea to felonious assault and the assault charged was dismissed. Appellant was then sentenced to a maximum eight-year, consecutive sentence. Appellant timely appealed and raises the following assignment of error:

The trial court's imposition of the maximum sentence was contrary to law. The trial court's order of a consecutive sentence to prior sentences from different courts was contrary to law.

{¶ 4} In appellant's sole assignment of error he challenges the duration and consecutive nature of the sentence imposed. We note that the court reviews felony sentences under the two-prong approach set forth in R.C. 2953.08(G)(2). *State v. Tammerine*, 6th Dist. Lucas No. L-13-1081, 2014-Ohio-425, ¶ 11. R.C. 2953.08(G)(2) provides that an appellate court may increase, reduce, modify, or vacate and remand a dispute sentence if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

{¶ 5} Appellant argues that his maximum, consecutive sentence is contrary to law because he received significantly less prison time when sentenced for prior, similar offenses. Although the abuse of discretion standard set forth in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, is no longer controlling in appellate review of felony sentencing, we recognized in *Tammerine* that *Kalish* still can provide guidance for determining whether a sentence is clearly and convincingly contrary to law:

Significantly, *Kalish* determined that a sentence was not clearly and convincingly contrary to law in a scenario in which it found that the trial court had considered the R.C. 2929.11 purposes and principles of sentencing, had considered the R.C. 2929.12 seriousness and recidivism factors, had properly applied post release control, and had imposed a sentence within the statutory range. *Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124 at ¶ 18. *Tammerine* at ¶ 15.

{¶ 6} At the March 6, 2014 sentencing hearing the trial court noted that in sentencing appellant, it was required to consider R.C. 2929.11 and 2929.12, and factors

under R.C. 2929.13. R.C. 2929.11(A) states that a sentencing court “shall be guided by the overriding purposes of felony sentencing * * * [which] * * * are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.” The statute outlines matters to be considered to achieve those purposes. Under R.C. 2929.11(B) the statute also provides that the felony sentence is to be “commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact upon the victim, and consistent with sentence imposed for similar crimes committed by similar offenders.”

{¶ 7} R.C. 2929.12 sets forth factors relating to the seriousness of the conduct, likelihood of recidivism, and pertaining to the offender’s service in the armed forces. R.C. 2929.12(A).

{¶ 8} The trial court chronicled appellant’s criminal history, which included nine adult felonies. Notably, while in custody appellant was convicted in Scioto County of attempted felonious assault and sentenced to two years of imprisonment. In Ross County he was convicted of two counts of harassment by an inmate and ordered to serve two concurrent six-months sentences. Again in Scioto County, he was convicted of assault on a corrections officer, and harassment by an inmate and sentenced to one-year concurrent sentences. The court then noted that appellant had seven felony convictions while in custody and over 70 institutional infractions.

{¶ 9} The court stated that in looking at appellant’s proclivity for violence and taking into consideration the need to protect the public, “to give anything but the maximum sentence would demean the seriousness of the offense.” The court further noted that the maximum sentence was “necessary to protect the public from future crime and punish the defendant and not disproportionate to the seriousness of the defendant’s conduct or the danger the defendant poses.”

{¶ 10} As to the imposition of consecutive sentences, the court stated:

[T]he harm was so great or unusual that no single prison sentence, and we’re talking now in terms of consecutive sentences, no single prison term for any of the offenses that he’s committed in the past should be ignored and therefore we do find the seriousness of the defendant’s conduct results in a consecutive sentence.

{¶ 11} The court further found that consecutive sentences were necessary based on appellant’s criminal history.

{¶ 12} Appellant additionally argued that at sentencing, the court erroneously permitted the victim to address appellant directly. While a victim is permitted to address the court, not the defendant, we note that appellant specifically requested that she be allowed to continue her remarks to him and that there is no evidence that her statements affected appellant’s sentence. *See State v. Harwell*, 149 Ohio App.3d 147, 2002-Ohio-4349, 776 N.E.2d 524 (6th Dist.)

{¶ 13} In the court's March 11, 2014 judgment entry, it stated that in sentencing appellant it considered the principles and purposes of sentencing under R.C. 2929.11, and the seriousness and recidivism factors under R.C. 2929.12. The court noted that anything but a maximum sentence would demean the seriousness of the offense and that the eight-year sentence was necessary to protect the public and punish the offender. The court further stated that the maximum sentence was not disproportionate to appellant's conduct or the danger he poses.

{¶ 14} As to consecutive sentences, the court similarly stated that they were necessary to protect the public from future crime and to punish appellant and they were not disproportionate. The court further stated that the harm caused was so great or unusual that no single prison term would adequately reflect the seriousness of appellant's conduct and that his criminal history required consecutive sentences.

{¶ 15} Upon review, we find that the trial court thoroughly stated its reasons for imposing a maximum, consecutive sentence and that appellant's sentence was not contrary to law. Appellant's assignment of error is not well-taken.

{¶ 16} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair proceeding and the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.